

INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Statute and regulations involved.....	2
Questions presented.....	2
Statement.....	2
Specification of errors to be urged.....	7
Reasons for granting the writ.....	9
Conclusion.....	16
Appendix A.....	17
Appendix B.....	19

CITATIONS

Cases:

<i>Cudahy Brothers Co. v. United States</i> , 155 F. 2d 905.....	10
<i>DeLaval Steam Turbine Co. v. United States</i> , 284 U. S. 61.....	12
<i>Graves v. United States</i> , 62 F. Supp. 231.....	11
<i>Lessner Plumbing and Heating Co. v. United States</i> , 64 F. Supp. 931.....	11
<i>Louisville Flying Service v. United States</i> , 64 F. Supp. 938.....	11
<i>Minnesota Rate Cases</i> , 230 U. S. 352.....	13
<i>Monongahela Navigation Co. v. United States</i> , 148 U. S. 312.....	13
<i>Olson v. United States</i> , 292 U. S. 246.....	12
<i>United States v. Delano Park Homes</i> , 146 F. 2d 473.....	15
<i>United States v. Miller</i> , 317 U. S. 369.....	12
<i>United States v. New River Collieries</i> , 262 U. S. 341.....	10, 12, 13, 16
<i>United States v. Petty Motor Co.</i> , 327 U. S. 372.....	15
<i>Vogelstein & Co. v. United States</i> , 262 U. S. 337.....	10, 12, 13
<i>Wells Brothers Co. v. United States</i> , 254 U. S. 83.....	15

Constitution:

Fifth Amendment to the Constitution of the United States.....	9
---	---

Statutes:

Act of October 16, 1941, c. 445, 55 Stat. 742, as amended by the Act of March 27, 1942, 56 Stat. 181 (50 U. S. C. App., Supp. V, 721 <i>et seq.</i>).....	2, 6
Sec. 1.....	17

Miscellaneous:

Amendment No. 1 to Revised Price Schedule No. 2 issued February 26, 1942.....	5
Hale, <i>Value in Condemnation Cases</i> , 31 Col. L. Rev. 1.....	11
Marcus, <i>The Taking and Destruction of Property Under a Defense and War Program</i> , 27 Cornell L. Q. 476.....	11, 12
Note 102, 51 Yale T. J. 819.....	11
Supplementary Order M-1-d issued January 7, 1942.....	4, 19
Supplementary Order M-1-e issued January 23, 1942.....	3, 13, 21
Supplementary Order M-1-f issued February 17, 1942.....	3,
	4, 13, 22

17427

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

NO. 1000

WASHINGTON, D. C.

TO THE SECRETARY OF THE INTERIOR
FROM THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT
SUBJECT: [Illegible]

[Illegible text block]

[Illegible text block]

[Illegible text block]

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 860

UNITED STATES, PETITIONER

v.

**THE ILLINOIS PURE ALUMINUM COMPANY, A
CORPORATION**

**PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS**

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled case on October 7, 1946.

OPINION BELOW

The opinion of the Court of Claims is reported at 67 F. Supp. 955.

JURISDICTION

The judgment of the court below was entered on October 7, 1946 (R. 35). The jurisdiction of this Court is invoked under the provisions of Section 3 (b) of the Act of February 13, 1925, as amended.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the Act of October 16, 1941, c. 445, § 1, 55 Stat. 742, 50 U. S. C. App., Supp. V, 721, are set forth in Appendix A. The regulations involved, issued by the War Production Board and its predecessor, the Office of Production Management, are set forth in Appendix B.

QUESTIONS PRESENTED

1. Whether, in a suit for just compensation by the owner of aluminum requisitioned by the United States, the maximum market value of the aluminum was the Government's Aluminum Recovery Program price, where, at the time of requisition, the aluminum was subject to wartime orders fixing maximum prices for sale and restricting use, and the only available markets at the time were the scrap market and the market established by the Aluminum Recovery Program, the price on the latter being the higher.

2. Whether the Court of Claims erred in fixing compensation for requisitioned property in excess of the highest available market price on the theory that it had special value to the owner, although there was no evidence of that special value.

STATEMENT

On February 29, 1944, the respondent corporation, pursuant to the Act of October 16, 1941,

as amended, 55 Stat. 742, 50 U. S. C. App., Supp. V, 721 (Appendix A, *infra*, pp. 17-18), filed a complaint in the Court of Claims for the recovery of "fair and just compensation" for certain aluminum stocks requisitioned by the Government under the Aluminum Recovery Program for war purposes (R. 2). These stocks were partially fabricated and had been purchased by respondent for the manufacture of its sole product, cooking utensils (R. 18, 26, Fdgs. 3, 17).

By 1941, in order to meet the demands of the defense program, the Office of Production Management, and its successor, the War Production Board, sought to increase the net current supply available to fill war requirements by restricting that metal's use and encouraging its movement to war production through the issuance and administration of the "M-1 series" of general aluminum conservation orders (R. 17-18, Fdg. 2). By January 23, 1942, the industrial use of aluminum was forbidden except for war items (Supplementary Order M-1-e, Appendix B, *infra*, pp. 21-22) and on February 17, 1942, the transfer of this metal to other than war users was similarly forbidden (Supplementary Order M-1-f, Appendix B, *infra*, pp. 22-25) (R. 18-20, Fdgs. 3, 4, 5, 6, 8). Respondent had no war contracts (R. 21, Fdg. 7) and by the issuance of Order M-1-e was prohibited from using aluminum in the manu-

facture of cooking utensils for civilian use.¹ Its inventory thus became "idle and excessive" and, as such, was treated as "Dead Stocks" by paragraph "f" of Supplementary Order M-1-f. This order directed respondent to dispose of the aluminum in question by transfer to buyers in fulfillment of rated purchase orders for essential items, or by sale as scrap in accordance with Supplementary Order M-1-d (Appendix B, *infra*, pp. 19-21).

Respondent, by itself and through the Aluminum Company of America, was unsuccessful in its attempt to find eligible buyers (R. 38).² Moreover, at the time that the requisition of respondent's stock had been authorized but prior to

¹ Cooking utensils were not on the list of permitted uses. During the period when order M-1-e was effective Army and Navy procurement officers were not specifying aluminum for cooking utensils or similar vessels ordered. Under the nation-wide policy with which the hardship clause (Par. e) was administered the respondent could not have obtained an authorization to make cooking utensils (R. 20-21, Fdg. 6).

² The court below has failed to make satisfactory findings of fact in respect to the efforts of respondent and the WPB to find "as is" purchasers for respondent's stocks subsequent to the issuance of Supplementary Orders M-1-e and M-1-f. The court merely found that respondent, "not knowing who had war contracts, was unable to find a buyer in the market before the property was requisitioned" (R. 30, Fdg. 22), and that the War Production Board "made some effort to locate users for such stocks or inventories in war production * * *" (R. 23, Fdg. 10). The court below, pursuant to petitioner's request, has certified the evidence in respect of this aspect of the case, as part of the record before this Court.

actual taking, the WPB, which acted as a clearing house for the purpose of bringing holders of frozen aluminum stocks and authorized purchasers together, had made diligent but futile efforts to locate eligible buyers by checking respondent's inventory against the unfilled orders of the Aluminum Company of America and the Reynolds Metal Company, which were the only domestic producers of aluminum at that time (R. 41). In addition, the WPB approached representatives of various warehousemen and requested them to check respondent's inventory for possible purchasers. However, no purchaser could be found (R. 41-43).

To accelerate the movement of frozen inventories into war production and to save their holders from hardship, the WPB, in February, 1942, inaugurated the Aluminum Recovery Program by which all holders of idle aluminum were asked to sell it to the Government at Program prices³

³ With respect to respondent's inventory, the Program prices amounted to \$30,791.83 (R. 26) or 71.9 percent of the trade list prices (R. 33) and were approximately eighty-seven percent greater than the OPA remelt or scrap price of \$16,480.98 (R. 29, Fdgs. 21-22). The Program prices were computed by the War Production Board so as to induce holders to sell their inventories voluntarily rather than to incur charges incident to their retention and were designed to avoid the burden of wholesale requisitions (R. 33).

On February 26, 1942, the Office of Price Administration issued Amendment No. 1 to Revised Price Schedule No. 2, which remained in effect through May 20, 1942, and which permitted sales of scrap aluminum to Metals Reserve Com-

(R. 23, Fdg. 10). In response to this program, 1961, or more than ninety nine percent of these holders voluntarily sold their idle inventories to the Government; only ten holders, including respondent, refused to sell to the Government at the program price (R. 24-25, Fdgs. 11, 12).

Acting pursuant to the Act of October 16, 1941, as amended (Appendix A, *infra*, pp. 17-18), the Government, on May 20, 1942, requisitioned respondent's aluminum (R. 25, Fdg. 14). Respondent duly filed with WPB its proof of claim for \$45,145.25 as fair and just compensation (R. 26, Fdg. 15).⁴ On July 28, 1942, the Government made a preliminary determination that fair and just compensation for the property taken was \$30,791.83, computed according to the Program price, and so advised respondent. Respondent again objected to this determination and reiterated its claim for \$45,145.25. On October 19, 1942, respondent received from WPB a copy of Award of Compensation in the amount of \$30,791.83, together with a letter informing it that if it was unwilling to accept that amount as full and

pany (a Federal corporation) at the Program prices, but provided that sales by Metals Reserve Company should be subject to OPA Price Schedule No. 2 (R. 27, Fdg. 18).

⁴ The court below found that the cost of the requisitioned inventory was \$46,121.92, including handling charges (R. 30, Fdg. 25); that its value based on the October 1, 1941, price list was \$42,847.17 (R. 30, Fdg. 22); and that its scrap value (the only market open to respondent except the market established by the Aluminum Recovery Program) was \$16,480.98 (R. 29, Fdg. 21).

complete compensation, Metals Reserve Company had been authorized to pay fifty percent of that amount (\$15,395.92) upon the execution of a proper release and indemnity agreement. This was accepted by respondents who, on January 18, 1944, executed a release reserving the right to assert a claim against the United States for \$29,749.33 (an amount which when added to \$15,395.92 it considered just compensation for the requisitioned aluminum) (R. 26, Fdg. 16). The instant action was subsequently instituted to obtain a judicial determination of fair and just compensation (R. 1-4). The court below held that while the restrictions imposed on the use and sale of aluminum were valid, they did not justify the Government in its taking of "bright new aluminum cut for a specific purpose" at Program prices (R. 34); that while wartime rules necessarily affect values (R. 32) the Program prices in a large measure disregarded cost, market value, value to respondent, and the purposes for which it was assembled and paid (R. 34); and that "in view of all the facts and evidence in the case * * * the amount which should be paid to [respondent] as just compensation for the value of the interest taken at the time it was taken is \$36,420.10" (R. 34).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

- (1) In failing to hold that the market value at the time of the requisition constituted the measure

of just compensation in the circumstances of this case.

(2) In failing to find that the price established under the Aluminum Recovery Program constituted the fair market value of the requisitioned aluminum and was, therefore, the measure of the just compensation to which respondent was entitled.

(3) In failing to find that at the time of the requisition of the respondent's aluminum there were only two available markets for its aluminum, the OPA scrap market and the WPB Aluminum Recovery Program, the latter being the best available market.

(4) In failing to find that the WPB made exhaustive efforts to locate a buyer for the aluminum inventory reported by the respondent and that that inventory was carefully compared with unfilled orders on file with the Aluminum Company of America and the Reynolds Metal Company, the two producers of aluminum at that time; that the inventory was also kept available for a short time for inspection by warehousemen and others seeking aluminum parts for permissible use, who were constantly examining inventories on file with WPB to pick up available aluminum parts; and that the Aluminum Company of America at respondent's request also unsuccessfully tried to find a buyer for respondent's aluminum.

(5) In failing to find that no market for respondent's aluminum "as is" existed and that no buyer therefor could be found.

(6) In fixing as just compensation for the aluminum requisitioned an amount in excess of its market value at the time of the requisition.

(7) In fixing as just compensation for the aluminum requisitioned an amount unsupported by evidence.

(8) In taking into consideration in fixing the just compensation on the requisitioned aluminum, the cost thereof, the replacement value, the possibility of future use, and other inapplicable elements.

REASONS FOR GRANTING THE WRIT

1. *The issues are of national importance.*—The issues of federal law raised by this case are important for their bearing on the liability of the Government, under the limitation imposed by the Fifth Amendment, to accord just compensation to an owner whose property has been taken for a public use. Although this Court has consistently enunciated the principle that in such circumstances "just compensation" is to be determined by reference to the fair market value of the property at the time of the taking (see *infra*, pp. 11-13), it has never passed upon the precise issue that where the only market available is controlled by the United States in the exercise of its lawful war powers, the maximum price on that market is the

proper measure of "just compensation."³ The holding of the Court of Claims that where the market is subject to complete governmental control "just compensation" is to be determined by reference to the uncertain formula, "all the circumstances in the case," is in direct conflict with the recent decision of the Circuit Court of Appeals for the Seventh Circuit in *Cudahy Brothers Co. v. United States*, 155 F. 2d 905^{*} and the de-

^{*} In *Vogelstein & Co. v. United States*, 262 U. S. 337, it was found that the price fixed by the War Industries Board was also maintained voluntarily by the copper producers, and hence sufficiently evidenced the market price to be used as the measure of just compensation. In *United States v. New River Collieries*, 262 U. S. 341, it was held that where there was both a domestic market and a higher export market, the price in the latter prevailed.

^{*} In the *Cudahy* case, the Government, pursuant to the statute here involved, requisitioned plaintiff's beef carcasses. The Office of Food Distribution Administration determined fair and just compensation for the requisitioned beef by reference to the OPA ceiling price for beef carcasses, and tendered plaintiff an award based on that figure. The record disclosed that plaintiff could have obtained substantially more had he been permitted to retain the beef and to sell it butchered and in less than carload lots. Plaintiff refused to accept the award of the Food Distribution Administration and sought judicial determination of "just compensation." It argued that "fair value and just compensation" presupposes the existence of a free market; that since no "free" market existed, resort should be had to indicia of value other than an artificially created market. The court, however, held plaintiff's recovery was to be measured by the OPA ceiling price. The court stated that where a market price prevails at the time and place of taking, that price is just compensation and that anticipated profits which are lost because of the taking are not to be included or used as a measure.

cisions of several district courts,¹ which hold that the proper measure of just compensation is the market price at which property is actually bought and sold at the time of the taking and that the causes which control or affect the market at the time are immaterial.²

We submit that the question here involved is of public importance and should be decided by this Court. Records of the Department of Justice disclose that there are pending twenty-nine cases in the Court of Claims and four cases in the district courts of the United States involving substantially the same problem. Moreover, the Civilian Production Administration has advised that seventy additional cases are in a position which may result in suit, and that as a result of the decision below it is conceivable that over sixteen thousand other cases may be brought.

2. *The decision below is clearly erroneous.*—It is settled law that where requisitioned property has an established market value at the time of

¹ *Graves v. United States*, 62 F. Supp. 231 (W. D. N. Y.); *Lessner Plumbing and Heating Co. v. United States*, 64 F. Supp. 931 (S. D. N. Y.); *Louisville Flying Service v. United States*, 64 F. Supp. 938 (W. D. Ky.) Moreover, the decision of the court below, which allows a seller whose goods have been requisitioned to obtain a price higher than the established price ceiling is clearly inconsistent with the policy of price control. See Note 102, 51 Yale L. J. 819, 840; Marcus, *The Taking and Destruction of Property under a Defense and War Program*, 27 Cornell L. Q. 476, 528-529.

² See Hale, *Value in Condemnation Cases*, 31 Col. L. Rev. 1, 2.

the taking, that value will be regarded as the measure of just compensation for the property taken* (*Vogelstein & Co. v. United States*, 262 U. S. 337; *United States v. New River Collieries*, 262 U. S. 341); it may be more or less than the investment (*Olson v. United States*, 292 U. S. 246); and where a ready market exists resort may not be had to other indicia of value to determine just compensation (*United States v. New River Collieries*, *supra*; *United States v. Miller*, 317 U. S. 369; Marcus, *The Taking and Destruction of Property Under a Defense and War Program*, 27 Cornell L. Q. 476). While just compensation includes all of the elements of value that inhere in the property, it does not exceed the market value of the property fairly determined. (*Olson v. United States*, *supra*, at p. 255.) Anticipated profits which are lost because of the taking are not to be included or used as a measure of just compensation (*DeLaval Steam Turbine Co. v. United States*, 284 U. S. 61), nor does the value to be ascertained include compensation for such items as cost, special value to the seller, and other elements resulting subsequently to, or because of, the taking. *Olson v. United States*, *supra*, at p. 256. These principles stem directly from the Fifth Amendment since it is the prop-

* In the instant case the power of the Government to requisition respondent's aluminum is not in issue (R. 34).

erty¹⁰ and not the cost of it nor its speculative value that is safeguarded by the Constitution.¹¹ Any other rule which would compensate the owner in an amount greater than the fair market value for all available uses and purposes at the time of the taking (*Vogelstein & Co. v. United States*, *supra*, p. 340), would be unfair to the United States (*United States v. New River Collieries*, *supra*, p. 344). This rule works no hardship on the owner, since he would be entitled to the gain if he had purchased at less than the market price at the time of the taking. *Vogelstein & Co. v. United States*, *supra*.

It is apparent that the Court of Claims misconceived the elements to be considered in determining just compensation in the instant case. At the time of the requisition only two lawful outlets¹²

¹⁰ The "just compensation" guaranteed by the Fifth Amendment "is for the property, and not to the owner," *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 326.

¹¹ E. g. *Minnesota Rate Cases*, 230 U. S. 352, 454.

¹² The Court of Claims failed to make proper findings with respect to the markets available to respondent for the disposal of its inventory subsequent to the issuance of Supplementary Orders M-1-e and M-1-f (Appendix B, *infra*, pp. 21-25). The record clearly discloses that there was no "as is" market for respondent's inventory; that hence the War Production Board's Aluminum Recovery Program market, used by all but ten holders of idle aluminum stocks, constituted the best market available, the only alternative outlet being a sale for remelt purposes at OPA scrap prices. Respondent's own testimony discloses that even with the assistance of the Aluminum Company of America, the largest domestic producer of aluminum at that time, it was unable

were available to the respondent for the disposal of its aluminum; the scrap market (R. 29, Fdg. 21), and the market established by the Government's Aluminum Recovery Program (R. 25, Fdg. 12). The scrap market value was \$16,480.98 (R. 29, Fdg. 21) and the Program price value was \$30,791.83 (R. 26, Fdg. 16). That this latter price constituted the fair market value of respondent's inventory is evidenced by the fact, found by the court, that, of the 1,971 holders of idle aluminum stocks, 1,961 holders voluntarily sold their excessive aluminum in this market (R. 25, Fdg. 12).¹³

to find an "as is" purchaser. Moreover, ~~the~~ had respondent been able to find a war contractor who could have used its material, it would have been sold (R. 39). In addition to the efforts which respondent made to dispose of its stocks, the undisputed testimony of War Production Board officials indicates that extensive efforts were made to find "as is" purchasers of respondent's stocks. Under the Aluminum Recovery Program, a two-fold effort was made to find "as is" purchasers of respondent's idle aluminum stocks. First, its inventory which had been submitted to the WPB (R. 23, Fdg. 10) was checked against the outstanding war requirements of the Aluminum Company of America and the Reynolds Metal Company, the sole domestic producers of aluminum at that time, in order to ascertain whether any of the producers' requirements could be filled from respondent's stocks (R. 41). Second, the WPB acted as a clearing house for East Coast aluminum warehouses. Representatives of these warehouses examined respondent's inventory in an effort to determine whether any of it could be channelled into war production (R. 41). The results of these efforts were negative (R. 42).

¹³ The 1971 holders of idle aluminum stocks were neither "unsophisticated nor careless." Had the Program price been set so low as to deny them what they considered a fair market

By placing a value on respondent's inventory which was higher than the highest price which the respondent could have obtained for its aluminum on the only legitimate available markets in existence at the time of the requisition, the Court of Claims erroneously disregarded the limitations and restrictions which lawfully circumscribed the market.¹⁴ Moreover, the holding that had respondent's aluminum not been requisitioned it would have been used in fulfillment of war orders in July, 1944 (R. 30, 32) is a patent disregard of all of the principles heretofore discussed governing the determination of "just compensation."¹⁵ *United States v. Petty Motor Co.*, 327 U. S. 372, 377-378.

price for their stocks it is clearly apparent that many more than ten of their number would have asserted their statutory right for a judicial determination of "just compensation." See e. g. *Wells Brothers Co. v. United States*, 254 U. S. 83, 87.

¹⁴ *United States v. Delano Park Homes*, 146 F. 2d 473, 474 (C. C. A. 2). It is to be noted that the court below, while stating that these lawful wartime restrictions on the use of aluminum necessarily affected the market and thus the value of respondent's aluminum, nevertheless it did not feel itself bound by them (R. 32). The inconsistency of this position is readily apparent.

¹⁵ The court resorted to the vague formula "all the facts and evidence in the case" (R. 34) to determine that respondent should be awarded an amount substantially in excess of the current market price as just compensation. The record is strangely silent on the factors which the court considered in reaching its decision other than the facts that the requisitioned property consisted of "bright new aluminum cut for a specific purpose" (R. 34); that in May, 1945, it was forced to purchase aluminum at list prices in order to fill a war contract, although it would have been able to use its former

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

JANUARY 1947.

stocks had they not been requisitioned (R. 32). Though it is clear that respondent's position subsequent to the taking is immaterial, *United States v. New River Collieries, supra*, nevertheless it is desired to point out that the record does not show how much of the requisitioned aluminum could have been used in filling the subsequent contracts (R. 29-30, Fdgs. 22, 23).

APPENDIX A

Section 1 of the Act of October 16, 1941, 55 Stat. 742, as amended by the Act of March 27, 1942, 56 Stat. 181 (50 U. S. C. App., Supp. V, 721), provided in part as follows:

Whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1943, determines that (1) the use of any military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions is needed for the defense of the United States; (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation for such property to be determined as hereinafter provided, and to dispose of such property in such manner as he may determine is necessary for the defense of the United States. The President shall determine the amount of the fair and just compensation to be paid for any property requisitioned and taken over pursuant to this Act * * * but each such determination shall be made as of the time it is requisitioned * * * in accordance with

the provision for just compensation in the fifth amendment to the Constitution of the United States. If, upon any such requisition of property, the person entitled to receive the amount so determined by the President as the fair and just compensation for the property is unwilling to accept the same as full and complete compensation for such property he shall be paid 50 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States in the manner provided by sections 24 (20) and 145 of the Judicial Code (U. S. C., 1934 ed., title 28, secs. 41 (20) and 250) for an additional amount which, when added to the amount so paid to him, he considers to be fair and just compensation for such property. * * *

APPENDIX B

Supplementary Order M-1-d (R. 19), issued by OPM on January 7, 1942, provides, in part:

(a) Definitions. For the purposes of this Order:

(1) "Aluminum" means any material the principal individual ingredient of which by either weight or volume is metallic aluminum.

(2) "Scrap" means all materials or objects which are the waste or by-product of industrial fabrication, or which have been discarded on account of obsolescence, failure or other reason, the principal ingredient of which by either weight or volume is metallic aluminum.

(3) "Plant scrap" means that Scrap which is generated in the course of manufacture, including also drosses, skimmings, and defective or rejected material the principal metallic ingredient of which is aluminum.

(4) "Segregated scrap" means Scrap which has been segregated and otherwise handled in such manner as to be acceptable for reprocessing into Aluminum of the original specifications, without the necessity for other than routine examination by the processor.

(5) "Mixed scrap" means all scrap other than Segregated Scrap.

* * * * *

(c) *Restrictions on use of scrap.*—No person other than a Producer or Approved Smelter may melt, reprocess, smelt or

otherwise use Aluminum Scrap unless specifically authorized by the Director of Priorities: *Provided, however, That* a Person who in normal course of operations melts Aluminum Scrap in fabricating Aluminum products may use his Plant Scrap in the plant in which it is generated in the production of those products (and only those products) for which he is currently obtaining allocations of Aluminum from the Director of Priorities, if in applying for such allocations he shall have reduced his requirements by a reasonable amount in anticipation of the amount of recoverable Plant Scrap.

* * * * *

(e) *Sale of plant scrap.* Unless specifically authorized by the Director of Priorities, no Person generating Plant Scrap may sell or deliver any such Scrap that he is not entitled to use in accordance with paragraph (c), except as follows:

(1) *17S, 24S and 52S solids.*—Segregated Scrap consisting of 17S, 24S and 52S Aluminum alloys in solid form, respectively, shall be sold and shipped directly to a Producer.

(2) *All other segregated scrap.*—All other Segregated Scrap shall be sold and shipped directly to a Producer or Approved Smelter: *Provided, however, That* where the amount of Segregated Scrap of any one alloy specification and form type does not amount to 1,000 pounds or more per month, it may be sold to a Dealer.

(3) *Mixed scrap.*—Mixed Scrap shall be sold to an Approved Smelter or Dealer.

(f) *All other scrap.*—No person who owns or originates any Scrap (other than a Person generating Plant Scrap or a

Dealer) may sell or deliver such Scrap except to a Producer, Approved Smelter or Dealer; he shall not use or dispose of such Scrap in any other way.

Supplementary Order M-1-e (R. 20), issued by OPM on January 23, 1942, provides, in part:

(b) * * * No Person shall use Aluminum in manufacture except in production of the items (and the necessary material therefor), or for the uses, specified below, and then only where the use of alternate material is impracticable.

(c) *General Exception.*—The prohibitions and restrictions contained in (b) above shall not apply to the use of aluminum in the manufacture of any item (or the necessary material therefor) which is being produced under a specific contract or subcontract for the Army or Navy of the United States, the United States Maritime Commission, the Panama Canal, the Coast and Geodetic Survey, Coast Guard, Civil Aeronautics Authority, National Advisory Committee for Aeronautics, the Office for Scientific Research and Development, or any foreign country pursuant to the Act of March 11, 1941 * * * (Lend-Lease Act), if, but only if, in any such case, the use of aluminum to the extent employed is required by the specifications of the prime contract.

(e) *Relief.*—Any person affected by this order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a degree of unemployment which would be unreasonably disproportionate compared with the amount of aluminum conserved, or that compliance with

this order would disrupt and impair a program of conversion from nondefense to defense work, may appeal to the Office of Production Management * * *

Supplementary Order M-1-f (R. 21), issued by WPB on February 17, 1942, provides, in part:

(a) *Definitions.*—For the purpose of this Order:

(6) "Essential Item" means any Aluminum to be used in conformity with Supplementary Order M-1-e as the same may be amended from time to time.

(b) *Allocation of Output of Producers, Approved Smelters, and Fabricators.* No Producer, Approved Smelter, or Fabricator shall deliver any Aluminum except pursuant to allocation or as the Director of Industry Operations may otherwise specifically authorize. Each Producer, Approved Smelter, and Fabricator shall file a shipping schedule for each month, on or before the 15th day of the preceding month on Form PD-26A * * *. The Director of Industry Operations will thereupon issue to him specific allocations authorizing the deliveries which he may make during that month.

(d) *Operations Restricted to the Fulfillment of Purchase Orders for Essential Items.*—Aluminum in the hands of any Person other than a Producer, Approved Smelter, or Fabricator, may be acquired and disposed of without specific authorization from the Director of Industry Operations, but only in the fulfillment of rated purchase orders for Essential Items; provided, always, that any Aluminum received

pursuant to an allocation or other specific authorization shall be used and disposed of only for the particular purpose so authorized; and provided, further, that, except in the case of a Producer or Approved Smelter or as the Director of Industry Operations may specifically authorize, no Person shall acquire any Aluminum which he could use only by smelting or melting the same. Except as provided above or as the Director of Industry Operations may specifically authorize, no Aluminum shall be acquired or disposed of by any Person.

(f) *Dead Stocks.*—(1) All Aluminum which is not being used in, or which is in excess of immediate needs for, the fulfillment of purchase orders for Essential Items shall, promptly (i) be sold upon certification in writing to the seller by the buyer that he will use, promptly, the Aluminum in question in the fulfillment of rated purchase orders for Essential Items, or (ii) be scrapped and disposed of as provided in Supplementary Order M-1-d. No such Aluminum shall be acquired or disposed of in any other way except as the Director of Industry Operations may specifically authorize or direct. The provisions of (b), (c), and (d) above shall not apply to any transaction required by this subparagraph and specific authorization from the Director of Industry Operations is not required for any such transaction; provided, however, that, except in the case of a Producer or Approved Smelter or as the Director of Industry Operations may specifically authorize, no Person shall acquire any Aluminum which he could use only by smelting or melting the same.

(2) Each Person who owns any Aluminum shall, on or before March 31, 1942, report the amount and kind of all Aluminum owned by him; provided, however, that no such report need be filed (i) as regards any Aluminum to which this Order does not apply as provided in (n) below, or (ii) by a Governmental corporation or agency or any Person who is required to file inventory reports pursuant to (e) above. No special form is prescribed for such report. Failure to make such report on the part of any such Person shall be deemed a representation to the War Production Board, subject to the penalties of Section 35-A of the United States Criminal Code, that such person does not own any Aluminum.

* * * * *

(k) *Hardship Clause*.—Where, under the peculiar circumstances of individual case, disposition of Aluminum as required by (f) above cannot be effected at regularly established prices and terms of sale or payment, or would otherwise impose an unreasonable hardship or sacrifice, the Person required to dispose of the same may apply to the Director of Industry Operations for exemption in whole or in part from the operation of such provision. Such application shall specify the nature and extent of exemption applied for and shall fully set forth the facts alleged to prove unreasonable hardship or sacrifice.

* * * * *

(n) *Scope of the Order*.—This order shall govern the acquisition and disposition of all Aluminum, but, anything herein to the contrary notwithstanding shall not apply (i) to Aluminum products which are

being used by the ultimate consumer, (ii) to Aluminum products after completion which are being disposed of to, or for resale to, the ultimate consumer, in the normal channels of trade, or (iii) to "Aluminum Scrap" as defined in Supplementary Order M-1-d.

INDEX

	Page
I. Opinion below	1
II. Jurisdiction	1
III. Statute involved	2
IV. Questions presented	2
V. Statement	2
VI. The writ should be denied	7
A. The alleged issue, of national impor- tance, i. e., value in a market "subject to complete governmental control", is not raised by the facts	7
B. Petitioner's claims of conflict are un- founded	8
C. The decision below conforms to the ap- plicable decisions of this Court	10
Conclusion	11
Appendix A	12

CITATIONS

Cases:

<i>Bowles v. Willingham</i> , 321 U. S. 503	11
<i>Brooks-Scanlon Corp. v. United States</i> , 265 U. S. 106	11
<i>Cudahy Brothers Co. v. United States</i> , 155 F. (2d) 905	8, 9, 10
<i>Graves v. United States</i> , 62 Fed. Supp. 231	10
<i>Lessner Plumbing and Heating Co. v. United States</i> , 64 Fed. Supp. 931	10
<i>Louisville Flying Service v. United States</i> , 64 Fed. Supp. 938	10
<i>Monongahela Navigation Co. v. United States</i> , 148 U. S. 312	9, 11
<i>Olson v. United States</i> , 292 U. S. 246	11
<i>Seaboard Airline Railway Co. v. United States</i> , 261 U. S. 299	11

	Page
<i>United States v. New River Collieries Co.</i> , 262 U. S. 341	9, 11
<i>Westchester County Park Commission v. United States</i> , 143 F. (2d) 688	8
Statutes:	
Act of October 16, 1941, c. 445, 55 Stat. 742, as amended by the Act of March 27, 1942, 56 Stat. 181 (50 U. S. C. App., § 721)	2, 12
Miscellaneous:	
Supplementary Order M-1-d, issued January 7, 1942	3
Supplementary Order M-1-e, issued January 23, 1942	3
Supplementary Order M-1-f, issued February 17, 1942	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 860

UNITED STATES,

vs.

Petitioner,

THE ILLINOIS PURE ALUMINUM COMPANY,

A CORPORATION,

Respondent

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

I

Opinion Below

The opinion of the Court of Claims is reported at 67 F. Supp. 955.

II

Jurisdiction

The judgment of the Court of Claims was entered on October 7, 1946. The jurisdiction of the Court is invoked under the provisions of Section 3(b) of the Act of February 13, 1925, as amended.

III

Statute Involved

The pertinent portions of the Act of October 16, 1941, 55 Stat. 742, as amended, 50 U. S. C. App., Sec. 721, are set forth in Appendix A.

IV

Questions Presented

1. Whether, in a suit for just compensation by the owner of new, fabricated aluminum requisitioned by the United States, just compensation is limited to the amount offered by the taker, where, at the time of taking, the owner was free to hold the aluminum in stock or to sell the aluminum, as is, in the open market for permitted uses at a general market price and established ceiling price in excess of the amount offered by the United States.

2. Whether the Court erred in finding that just compensation was an amount in excess of the sum offered by the Government, where the finding is based upon a consideration of all relevant facts of record and is less than the general market and ceiling price at which respondent could have legally sold the property at the time and place of taking.

V

Statement

Commencing early in 1941 the Office of Production Management, and its successor, the War Production Board, issued a series of orders known as the "M-1 series" restricting the use of aluminum (R. 17-18, Fdg. 2). On March 22, 1941, the *amount* of aluminum which manufacturers could purchase for use in manufacturing civilian or commercial products was restricted (R. 18, Fdg. 3).

On January 23, 1942, the use of aluminum was, by Supplementary Order M-1-e, restricted to the manufacture of items produced under contract for the Army, Navy, Lend-Lease, etc., and 15 commercial items or uses not including cooking utensils (R. 20, Fdg. 6). Respondent's normal business since before 1900 had been the manufacture of cooking utensils made from aluminum (R. 17, Fdg. 1). It had no war contracts at that time and by Supplementary Order M-1-e respondent was prohibited from using aluminum in the manufacture of cooking utensils for civilian use (R. 21, Fdg. 7).

On February 17, 1942, the acquisition and disposition of aluminum supplies was prohibited by Supplementary Order M-1-f, except for the manufacture of items permitted by Supplementary Order M-1-e, called "Essential Items". Aluminum supplies owned by manufacturers which were not being used in, or which were in excess of the immediate needs for, the fulfillment of purchase orders for "Essential Items"¹ were permitted (1) to be sold to anyone upon the buyer's certification to the seller that he would promptly use such aluminum in the manufacture of Essential Items; or (2) to be scrapped and disposed of as provided in Supplementary Order M-1-d (R. 21-2, Fdg. 8), that is, to a producer, dealer or approved smelter, for remelt (R. 19-20, Fdg. 5). Absent requisition, respondent could have held the aluminum in stock for future use (R. 29, Fdg. 20).

Thereafter WPB sent out letters requesting detailed reports from holders of idle and excessive inventories and offered to buy such inventories at a scale of prices established by WPB in what is called the Program Price List. The prices offered averaged from 50% to 75% of the lowest

¹ Called idle and excessive inventories, defined as aluminum in excess of the amount required to be put into continuing production within 90 days in order to meet scheduled deliveries of "essential items" (R. 24, Fdg. 10).

base price, not including extras, for maximum quantities of the same items as quoted in the trade's current price lists, i. e., the price list of the Aluminum Company of America, dated October 1, 1941 (R. 23-24, Fdg. 10; R. 60-62). In addition to idle and excessive inventory supplies, WPB offered to purchase ingot, castings, forgings and scrap at the scrap ceiling price (R. 24, Fdg. 10).

The reports were received by WPB during March-September 1942 (R. 43). As the reports came in some effort was made by WPB to locate manufacturers who could use the material "as is" in the manufacture of Essential Items (R. 23, Fdg. 10) and when located they were put in touch with the holders and sales consummated between them in the general market (R. 25, Fdg. 12). In the case of respondent, however, the Government made no effort to find a permitted buyer who could use the material "as is". Rather, the Government requisitioned and took respondent's material immediately following receipt of its report. The report was received by WPB on April 25, 1942 (R. 24, Fdg. 11). On May 2, 1942, seven days later, WPB determined to requisition respondent's aluminum, not for remelt, but for sale or disposal to "manufacturers of military and naval equipment" (R. 25, Fdg. 13).² On May 16, 1942, the requisition was received by the marshal (R. 67) and on May 20, 1942, the property was taken by the marshal from respondent's storeroom and dumped into freight cars

² There is some testimony that on May 10, 1942, a WPB representative took approximately 1,000 reports, those which had so far come in, including respondent's, to the offices of the Aluminum Company of America in Pittsburgh, and Reynolds Metals Company in Louisville, where he spent seven days comparing the materials these companies had orders for with the materials listed in the reports. Assuming respondent's report was one of them, it was obviously an idle gesture because WPB had already determined to requisition respondent's aluminum before this trip was made and the requisition was in the hands of the marshal before the representative returned to Washington (R. 43-45). Ninety days was considered a reasonable time for holders to dispose of their inventory (R.41).

thereby damaging it in such a way as to prevent any possibility of its ever being used again "as is", and shipped it directly to a smelter (R. 25-26, Fdg. 14).

The property requisitioned from respondent consisted of 146,048 pounds (R. 25, Fdg. 14) of aluminum sheets, circles, coils, tubing and rivets, which respondent had purchased cut to shapes and ready for use in the manufacture of cooking utensils without undue waste. All of it was new, bright finish, fabricated aluminum. It was pure commercial aluminum. None of it was scrap, obsolete, damaged or defective material (R. 26, Fdg. 17). It was purchased by respondent at a cost of \$46,121.92 (R. 30, Fdg. 25).

At the time of taking, respondent was privileged to have sold the material in the general market to manufacturers for permitted uses, "as is", at the same price charged at the time of taking by the Aluminum Company of America for the same commodities as shown by its October 1, 1941, price list, or at a price of \$42,847.18 provided respondent could have found a buyer. However, not knowing who had war contracts, respondent was unable to find a buyer in the market before the property was requisitioned (R. 29-30, Fdg. 22). There were buyers in the market who could have used respondent's aluminum (R. 57-58).

The cost of replacing the requisitioned property, had respondent been free to buy at that time, would have been \$42,847.18, i. e., the price charged by the Aluminum Company of America for the same commodities at the time of taking (R. 29-30, Fdg. 22). Had the inventory not been requisitioned respondent could have held the material in stock for use in fulfillment of Navy contracts which it later obtained, or in the manufacture of cooking utensils for civilian use after the emergency had passed and the various orders were no longer effective (R. 29-30, Fdgs. 22, 23).

There was an existing market for the sale of idle inventory "as is" at prices in excess of the WPB Program Price. In response to the "aluminum recovery program", 38,800,000 pounds of aluminum were reported, of which 38,200,000 pounds were disposed of under the program (600,000 pounds were requisitioned) (R. 64). Of this latter amount 7,219,770 pounds were scrap and ingots, and 1,345,859 pounds were castings and forgings, which the Government purchased at the scrap price (R. 25, Fdg. 12). The remainder, or 29,634,371 pounds consisted of idle and excessive inventories of sheets, circles, coils, tubing, rivets, etc., of which the Government purchased 8,960,854 pounds for remelting at the program prices ranging from 50% to 75% of the base prices shown in the trade's current price lists (R. 25, Fdg. 12) and the difference, or 20,673,517 pounds, was either retained, or sold by the holders in the general market to manufacturers, for permitted use "as is" (R. 58, 64-65). Thus, it appears that only 30% of all idle and excessive aluminum inventories reported were purchased by the Government at the Program price.

On July 28, 1942, petitioner made a preliminary determination that the Program price of \$30,791.83 was fair and just compensation for the property taken and so advised respondent. On October 19, 1942, respondent received from WPB a copy of Award of Compensation in the amount of \$30,791.83. Respondent rejected the determination, accepted partial payment in the amount of \$15,395.92 (50%) on January 18, 1944 (R. 26, Fdg. 16). The instant action was subsequently instituted to obtain a judicial determination of fair and just compensation.

The Court below awarded judgment to respondent upon a finding that just compensation for the value of the interest taken at the time it was taken was \$36,420.10 (R. 34).

VI

The Writ Should Be Denied

A. *The alleged issue, of National importance, i. e., value in a market "subject to complete governmental control," is not raised by the facts.*

Petitioner's contention that this case raises a novel question as to market value, where the market is subject to complete governmental control, lacks reality in the light of the facts. Respondent had, in addition to the markets mentioned by petitioner, the privilege of selling its aluminum in the general market, at the same price charged by the Aluminum Company of America for the same commodities, or at a price of \$42,847.18, which is a greater price than the award made to respondent by the Court below (R. 29-30, Fdg. 22). It is implicit in this finding of the Court of Claims that this higher price would not exceed the applicable price ceiling under OPA regulations.³

There did exist, in fact, markets other than those at the scrap market and the WPB Aluminum Recovery Program prices. It is established herein that over twenty million pounds of aluminum of the general type of that held by respondent were either retained, or sold in the general market, for "as is" use, while only approximately 9,000,000 pounds were sold to the government for remelt at the

³ The Government's OPA expert, Kurt J. Rahlson, testified that a sale of respondent's inventory of aluminum on May 20, 1942, the date of taking, would have been subject to the OPA "general maximum price regulation which became effective on May 11, 1942, and froze each seller's price at the highest price at which he had sold the same material during March, 1942." Since respondent did not engage in selling such aluminum supplies, and, therefore, had no maximum price of its own, the witness explained that respondent would have been authorized "to sell at the nearest maximum price that could be found for it, which in this instance would have been the price by the Aluminum Company of America" (R. 65-67).

Aluminum Recovery Program price. (See *supra*, p. 6). The general market prices, as reflected by the ALCOA price list, were from 33 $\frac{1}{3}$ % to 100% higher than the Recovery Program prices.

Petitioner should not now be heard to maintain that the general market was not available to respondent, when the decision to requisition its aluminum was made within a week after the receipt of respondent's inventory, and the actual requisition was completed in less than a month. Ninety days was considered to be a reasonable time within which to permit a holder of inventory to dispose of it in the general market (R. 41). Moreover, respondent is entitled to just compensation measured by the general market price regardless of whether it was in a position to find an immediate buyer. *Westchester County Park Commission v. U. S.*, [2 Cir.], 143 F. (2d) 688, 692-3, cert. den., 323 U. S. 726.

Contrary to petitioner's statement (Pet., p. 10), the Court of Claims did not hold and the facts do not support a conclusion that the market was "subject to complete governmental control". There may be pending cases involving this question, or the effect of a legal price ceiling less than the amount of the award, but neither question is involved in this case.

B. Petitioner's claims of conflict are unfounded.

In *Cudahy Brothers Co. v. U. S.*, 155 F. (2d) 905 (CCA-7), the established market price, the OPA ceiling price and the amount of the Government award were identical. Plaintiff there contended that the market price, because of the OPA ceiling, was an artificial one and should be disregarded, and attempted to establish a higher value by showing anticipated profits. There is no conflict with the

principles of the decision in this case, since respondent makes no claim for loss of profits, and the award made by the Court below is less than the applicable OPA ceiling price, and the prevailing general market price.

It may be that the petitioner is seeking to import into this case an issue not previously raised by it or considered by the Court below, *i. e.*, whether the Aluminum Recovery Program price represented a price ceiling on sales of aluminum for remelt and is the applicable ceiling. The facts, however, do not present this issue. Up to the moment of requisition, respondent could have sold its aluminum for use "as is" in the general market at the prices charged by ALCOA, which was respondent's ceiling price, if it could have found a buyer. The amount of money necessary to place respondent in as good a position pecuniarily as it would have occupied, if its property had not been taken, is not affected by the mere act of requisition, the amount offered by the Government, nor the use made of the property by the Government. *Monongahela Navigation Co. v. U. S.*, 148 U. S. 312; *U. S. v. New River Collieries Co.*, 262 U. S. 341.

The Aluminum Recovery Program price was not itself a price ceiling established by OPA; it was an exception to the application of the ceiling price on aluminum scrap, if idle and excessive inventories were sold as scrap to Metals Reserve Company "pursuant to the program" (R. 27, Fdg. 18). Moreover, respondent's property was not requisitioned for remelt, but for sale or disposal to "manufacturers of military and naval equipment" (R. 25, Fdg. 13).

The only noteworthy difference in result between the *Cudahy* case and the instant one, is that respondent here was made to bear the hypothetical expense of finding a purchaser, or of storing its supplies until a later time, so that

respondent did not receive the full ceiling and market price as did the claimant in the *Cudahy* case.⁴

C. The decision below conforms to the applicable decisions of this Court

The Court below held that the value of respondent's aluminum at the time it was taken was \$42,847.18, according to the ALCOA price list in effect at that time, which largely governed the market price; that the actual value for purposes of just compensation must be found from all of the facts and circumstances disclosed by the record; that the wartime regulations and controls necessarily affected values; that had respondent's property not been requisitioned, it would have been faced with the necessity of going to the expense of finding a buyer who had a war contract, or of holding its stocks until the emergency had passed, which would mean a tie-up of capital and expense of storage; and that in view of all the facts and evidence, and after having "taken into consideration essential wartime priorities, restrictions, and regulations which necessarily affected the value", the amount which should be paid to respondent as just compensation for the value of the interest taken at the time it was taken is \$36,420.10 (R. 34).

Thus, the Court below awarded respondent just compensation in an amount which, in its judgment, might have been arrived at by fair negotiations between a willing buyer and a willing seller, taking into account all considerations

⁴ *Graves v. United States*, 62 F. Supp. 231 (W. D., N. Y.), *Lessner Plumbing & Heating Co. v. United States*, 64 F. Supp. 931 (S. D., N. Y.) and *Louisville Flying Service v. United States*, 64 F. Supp. 938 (W. D., Ky.), the District Court cases cited by petitioner, are not in conflict. The *Graves* case involved a finished product (cast bronze blowtorch handle brackets), the use of which had been prohibited by the Government and for which there was no market in its existing state. The *Lessner* case involved a small unmarketable quantity (1,577.7 pounds) of odds and ends of brass pipe, left over from repair jobs. In the *Louisville Flying Service* case the claimant was awarded the full formula price, as was the claimant in the *Cudahy* case, *supra*.

that fairly might be brought forward and reasonably given substantial weight in such bargaining, in accordance with *Olson v. U. S.*, 292 U. S. 246.

In reaching its determination, the Court gave consideration to the character of respondent's aluminum, and gave full effect to the essential regulations and controls exercised by the Government in wartime, and made an award to respondent to place it in as good a position pecuniarily, after considering the entire record, as it would have been in had its property not been taken. The Court's decision accords with the settled law. *Monongahela Navigation Co. v. U. S.*, *supra*; *U. S. v. New River Collieries Co.*, *supra*; *Bowles v. Willingham*, 321 U. S. 503; *Seaboard Airline Railway Co. v. U. S.*, 261 U. S. 299; *Olson v. U. S.*, *supra*; *Brooks-Scanlon Corp. v. U. S.*, 265 U. S. 106.

Conclusion

The decision of the Court below is correct and involves neither a conflict of decision nor a question of general importance. It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

WALTER G. MOYLE,
RALPH P. WANLASS,
1109 Earle Building,
Washington 4, D. C.,
Counsel for Respondent.

Of Counsel:

ERNEST H. OLIVER,
1109 Earle Building,
Washington 4, D. C.;

POPPENHUSEN, JOHNSTON, THOMPSON & RAYMOND,
11 South LaSalle Street,
Chicago 3, Illinois.

February, 1947.

APPENDIX A

Section 1 of the Act of October 16, 1941, 55 Stat. 742, as amended by the Act of March 27, 1942, 56 Stat. 181 (50 U. S. C. App., Sec. 721), provided in part as follows:

Whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1943, determines that (1) the use of any military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions is needed for the defense of the United States; (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation for such property to be determined as hereinafter provided, and to dispose of such property in such manner as he may determine is necessary for the defense of the United States. The President shall determine the amount of the fair and just compensation to be paid for any property requisitioned and taken over pursuant to this Act * * * but each such determination shall be made as of the time it is requisitioned * * * in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States. If, upon any such requisition of property, the person entitled to receive the amount so determined by the President as the fair and just compensation for the property is unwilling to accept the same as full and complete compensation for such property he shall be paid 50 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United

States in the manner provided by sections 24 (20) and 145 of the Judicial Code (U. S. C., 1934 ed., title 28, secs. 41 (20) and 250) for an additional amount which, when added to the amount so paid to him, he considers to be fair and just compensation for such property. • • •

(9208)